lawfully committed, there would be no time limit upon another petition for prohibition after a denial in the superior court. (See *McGonagill v. Superior Court,* (1963), 214 Cal. App. 2d 192, 29 Cal. Rptr. 485.) Further, as to any petitioner who has been convicted, there is a further state remedy by appeal. It would not appear that any of the instant four cases would acquire any greater degree of mootness by using these presently available state remedies.

III.

Treatment of the Petition as a Group Action Would Infringe the Rights of Individuals Who Have Not Petitioned the Court for Any Relief.

Since the great majority of riot cases have been concluded some defendants have been acquitted and some have been convicted of lesser offenses and have already served short jail sentences. While there might possibly be some propriety in setting aside proceedings in the petitioners' case and subjecting them to a new trial, we submit that this result should not be inflicted upon other individuals of the alleged class.

IV.

There Is No Showing of Inadequacy of Counsel.

It is further submitted that on the merits a writ should not issue since the limited record before the court does not establish any basis for relief.

Interestingly enough, the facts, even as to the four individual petitioners here, disclose no inadequacy of counsel. Two of them were acquitted. (Footnote, p. 6.)

One (Watkins) had her bail reduced from $4,900.00 to $250.00, and although originally charged with burglary, a felony, was convicted of mere trespass, a misdemeanor. The other defendant (Proctor) had his bail reduced from $4,750.00 to $2,500.00, and although originally charged with burglary, a felony, was convicted of mere trespass, a misdemeanor. (Petition, pp. 4-6.) Such a record is inconsistent with the claim of inadequate counsel.

As to the members of the class whom petitioners claim to represent, there are *no* affidavits of fact as to them. In the absence of such facts, respondents submit that the broad generalizations of the petition as to inadequacy of counsel must be ignored.

V.

Amount of Time Spent Advising Clients, and Change of Attorneys Must Be Related to the Individual Case.

Petitioners contend that because very little time was spent with each defendant that, therefore, defendants were inadequately represented. Respondents believe this court may take judicial notice of the fact that some cases are more complicated than others, and that the amount of time spent depends not only upon the complexity of the case but also on the familiarity of the attorney with the phase of law involved. In the instant cases the facts of the alleged crime were simple, and the familiarity of the Public Defender's Office with defense of persons accused of crime is apparent. (See affidavits contained in Appendices A and B.)

It may also be noted that a criminal proceeding in California is readily divisible into arraignment and plea, preliminary hearing, and trial, and that the use of attoneys specializing in each phase actually is advantageous to a defendant rather than prejudicial to him. The California courts have held that the mere fact that a different deputy public defender represents a defendant at an arraignment than at the trial does not constitute prejudicial error. *People v. Carreras* (1963), 216 Cal. App. 2d 807, 810, 31 Cal. Rptr. 436.

VI.

An Extreme Case of Inadequacy of Counsel Must Be Shown to Show a Violation of Constitutional Rights.

In responding to the issue of inadequacy of counsel, the District Court of Appeal in *People v. Moten* (1962), 207 Cal. App. 2d 692, 24 Cal. Rptr. 716, had the following to say, at 207 Cal. App. 2d 696-697:

> "Defendant contends that he was not adequately represented at the trial and that his attorney failed to introduce defense witnesses as requested by defendant and failed thoroughly to inquire into the credibility of the witnesses against him. In *People v. Monk,* 56 Cal. 2d 288 [14 Cal. Rptr. 633, 363 P. 2d 865], the same contentions were made. The court stated at pages 299-300: 'He further asserts that the public defender refused to examine the court-appointed psychiatrists, to call witnesses the defendant requested, and to bring defendant transcripts of the court proceedings. The psychiatrists were not called as witnesses, but reports by them

were introduced into evidence. Whether they should have been called and examined in court was a matter within the discretion of counsel. Defendant does not state the names of the additional witnesses whom he wished to call nor does he indicate what the nature of their testimony would have been. Therefore there is no basis for assuming that defense counsel did not exercise proper judgment in not calling additional witnesses. . . . Moreover, even if there had been any incompetency on the part of defense counsel, it is questionable whether defendant in the instant case could complain on appeal. A defendant may complain at any time during the trial that his counsel is not adequately representing him thereby affording the trial court an opportunity to correct the situation, but if a defendant fails to avail himself of this privilege at the trial level, he cannot ordinarily after an adverse judgment, first complain of the matter on appeal. . . . Under these circumstances we are not impressed that defendant's right to a fair trial was violated.'

"Further it appears from the record that counsel carefully brought to light, through cross-examination, many circumstances which tended to show bias on the part of prosecution witnesses, and motives which might induce them to prevaricate. 'We do not find that counsel's representation of appellant was of "such a low order as to render the trial a face and mockery of justice" as contended by appellant, nor that the situation is comparable to *People v. Davis,* 48 Cal.2d 241 [309 P.2d 1] upon which he relies. It is stated in *People v. Dupree,* 156 Cal.App.2d 60, 69 [319 P.2d 39]:

"Before it can be held that an accused's representation by counsel was inadequate to the degree that it violated his right to representation under the Fourteenth Amendment to the Constitution of the United States, an extreme case must be disclosed. The representation must be of such a low order as to render the trial a farce and a mockery of justice (*Diggs v. Welch,* 148 F.2d 667, 669 [80 U.S.App.D.C.5]), or it must be shown that the essential integrity of the proceeding as a trial was destroyed by the incompetency of counsel (*United States* ex rel. *Weber v. Ragan,* 176 F.2d 579, 586) . . . While the opportunity to try his former lawyer has its undoubted attraction to a disappointed prisoner, the courts are uniform in holding that the claimed absence of effective representation will not be sustained unless the circumstances surrounding the trial indicate a representation so lacking in competence that it becomes the duty of the court to observe and to correct it.'" (*People v. Prado,* 190 Cal.App.2d 374, 377 [12 Cal.Rptr. 141].) See also *People v. Robillard,* 55 Cal.2d 88, 97 [10 Cal.Rptr. 167, 358 P.2d 295]; *People v. Wein,* 50 Cal.2d 383, 410 [326 P.2d 457]. It appears from the record that counsel competently handled the trial of the case."

There is no claim in this case that attorneys were not appointed, or that the attorneys in the Public Defender's Office did not accept the appointment and carry out their functions. The only complaint is that in the case of four defendants, whose cases are now moot, the Public Defender did not spend as much time with the defendants as the latter apparently wished.

Respondents assert that this does not constitute cause for certiorari to issue from the highest court of the land.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel,

GEORGE W. WAKEFIELD,
Chief Assistant County Counsel,

DONALD K. BYRNE,
Deputy County Counsel,

Attorneys for Respondents, The Superior Court of the State of California for the County of Los Angeles (including the Juvenile Court thereof) and The Municipal Court of the Los Angeles Judicial District.

THOMAS C. LYNCH,
Attorney General of California,

WILLIAM E. JAMES,
Assistant Attorney General,

EVELLE J. YOUNGER,
District Attorney,

HARRY WOOD,
Chief, Appellate Division,

Attorneys for Real Party In Interest.

APPENDIX A.

Declaration of Paul G. Breckenridge, Jr.

State of California, County of Los Angeles—ss.

Paul G. Breckenridge, Jr. declares as follows:

That he is the Chief Trial Deputy, Los Angeles County Public Defender's Office; that he is a graduate of Stanford University and School of Law; that he was admitted to the California Bar in January 1953; that on August 10, 1953 he was appointed a Deputy Public Defender for Los Angeles County; and in December 1964 appointed to his present position; that as a deputy he participated in the defense of several thousand felony cases, at all stages of the proceedings, preliminary hearings, arraignments and pleas in Superior Court and eight and a half years continuously devoted to the trial of felony cases in Superior Court.

That the legal staff of the Public Defender's Office as of the beginning of the fiscal year, July 1, 1965, consisted of seventy-six (76) deputies. Of this number, eighteen (18) were assigned to branch offices, three (3) to the Civil Division, five (5) to the Psychiatric and Juvenile Courts, one (1) to Appeals, four (4) to the Master Calendar Criminal Court, three (3) to Administration and twelve (12) to Preliminary Hearings throughout the City and County; the remaining thirty (30) deputies were assigned to felony trials in the eighteen (18) Superior Court Departments in the downtown Los Angeles area, handling criminal trials.

That the jurisdiction of the office was expanded by the State Legislation effective September 17, 1965, to include misdemeanor representation. Consequently, forty-four (44) additional legal positions were authorized

thirty (30) effective August 1, 1965 and fourteen (14) effective September 17, 1965. The latter came about by reason of the absorption by the County of the personnel and duties of what had been the Los Angeles City Public Defender's Office. These additional positions did not alter the number of personnel assigned to felony trials; through August 30, 1965, ten (10) additional deputies had been employed, bringing the legal staff to eighty-six (86) deputies.

On Sunday, August 15, 1965, declarant received information from Chief Deputy District Attorney Ackerman that many persons had been arrested in connection with the Watts riots and that possibly fifteen hundred (1500) felony cases would be filed; that arraignments on felony cases would begin in Division 40 A of the Los Angeles Judicial District on August 16, 1965, and that Preliminary Hearings would be set in Department 100 of the Superior Court beginning at 1:00 p.m. on August 19, 1965. It was further anticipated that the regular Superior Court trial Judges would recess trial matters at noon in their respective courts and reconvene in the afternoons as committing Magistrates hearing Preliminary Hearings.

Beginning Monday, August 16, 1965, four (4) deputies were assigned to cover felony arraignments in the special Court 40 A, under the leadership of deputy T. Harunaga. An affidavit of T. Harunaga is attached hereto and specifically incorporated herein. Four (4) Deputy Public Defenders continued to represent defendants for purposes of arraignment in Division 40 A so long as it constituted the arraignment court.

The first preliminary hearings were scheduled August 19, 1965.

Inasmuch as the Superior Court trial departments were being utilized for this purpose, the Public Defender trial deputies were assigned to their respective departments to cover Preliminary Hearings. In addition, the ten (10) deputies hired during August were also available. It should be noted that approximately five (5) trial deputies were on vacation each week during the summer months). Regularly assigned Preliminary Hearing deputies, not otherwise involved, also assisted in the defense at the Preliminary Hearing level. In many courts, it was possible to assign two (2) deputies, so that one could interview while the other was conducting the preliminary. Most of the charges of burglary were simple factually and legally, and any experienced criminal defense lawyer would have had no difficulty in representing adequately each defendant following a relatively brief interview. Many lawyers appeared and volunteered to defend Watts defendants free of charge, on the first two or three days of Preliminary Hearings, but as time went on, fewer appeared and the Public Defender represented more and more. In many of these cases, the Deputy Public Defender was successful in having charges dismissed, in getting bail reduced substantially and securing the release of other defendants on their own recognizance. Declarant was personally congratulated by two lawyer-members of the A.C.L.U. on the very able and efficient manner in which the Public Defender conducted the defense of these Preliminary Hearings.

It should be pointed out that the felony procedure in California readily submits itself to a division of labor. This department with its fifty-one years of experience has regularly assigned deputies by function and

by courtroom. Naturally a defendant would prefer to have the same lawyer represent him at all stages of the proceedings but where a division of labor can be achieved without any diminution in the quality of representation more efficient departmental operation can be achieved. Since a felony case will ordinarily proceed from Preliminary Hearing to arraignment and plea in Department 100 of the Superior Court, and if the defendant pleads Not Guilty, thence to another Department for trial, less experienced deputies in the office are assigned to Preliminary Hearings, four (4) more experienced deputies to Department 100 and thirty (30) of the most experienced deputies to trials, each trial deputy assigned to a particular Department. Since a copy of the Reporter's Transcript of each Preliminary Hearing is given to the defense at the time of arraignment in Department 100, the deputy assigned to that court can adequately advise each defendant regarding his plea, possible bail motions and the motion to dismiss. Consequently each defendant represented by this department will be involved with two or three deputies. If the defendant pleads guilty in the Master Calendar Criminal Department, he will be represented at sentence by the same lawyer who represented him when he pleaded guilty. If he pleads Not Guilty, then his case is assigned for trial to a third deputy, who will thereafter have the responsibility of representing the defendant at all further proceedings. The normal case load of each trial deputy is four felony cases per week, set one a day, having one day for interviews. The week prior to the outbreak of the riot, Public Defender felony trials were being set approximately forty-two to forty-five days following the plea of Not Guilty. The first arraignments in Superior Court began

September 2, 1965 at 1:00 p.m. A Deputy Public Defender was present and appointed as attorney for many defendants. The defendants were arraigned, the transcripts were given to the Public Defender and the cases continued for plea to a later date. All clients on bail were escorted down to the Public Defender's Office and each defendant was interviewed by an experienced trial lawyer and his transcript evaluated in light of whether a motion for dismissal for insufficient evidence should be made. Inasmuch as it was obvious that time for interviews at this stage would be limited and the interviewing deputy would not be in court with the client, it was the policy of the department not to permit any defendant to plead guilty in Department 100. In every case but one, either a motion to dismiss was made or the defendant pleaded Not Guilty. On all custody cases, defendants were interviewed in jail by experienced deputies, transcripts were analyzed and a motion for reduction of bail was made on behalf of any defendant so requesting. This same procedure was followed on each day that special arraignment calendars were heard in Department 100. Bail defendants were instructed when to return to court and that if no 995 motion to dismiss were made, to plead Not Guilty, that the case would be set for trial, the case assigned to a trial lawyer who would then have ample time to prepare the case for trial and consult with each defendant. Bail defendants were further instructed and given a printed notice to contact the Public Defender's Office within a few days to arrange for an interview with their trial lawyer. In the one case where a defendant pleaded guilty in Department 100, his case came up for arraignment on a regular morning calendar, was inter-

viewed by one of the deputies regularly assigned to Department 100, admitted his guilt and pleaded guilty freely and voluntarily, was represented at sentence by the same deputy, and received a misdemeanor sentence and straight probation.

Upon a defendant's appearance for plea, many bail motions made on behalf of custody clients were granted, some defendants released on their own recognizance and many dismissal motions made.

Time spent with individuals following arraignment and before plea was not extensive but in declarant's opinion adequate. It was anticipated that a trial deputy, having more time and fewer cases would be able to work more extensively with each client assigned to him prior to the eventual trial.

Initially, this department received inquiries from attorneys desiring to volunteer services. Such attorneys were always advised they could take over any case in which a client of ours requested their services. Later, it became apparent that these lawyers were for the most part only interested in taking cases where they could be appointed and receive payment from the County. The Court's only authorization to pay private counsel comes from section 987a of the Penal Code. Only where the Public Defender refuses to represent a defendant for good cause does the court have authority to appoint and pay counsel. It is fundamental that the Public Defender could not justifiably refuse to represent any defendant, absent a conflict of interest, unless the Public Defender believed that his staff could not adequately and competently defend those cases assigned to him. That situation did not, in declarant's judgment, arise; at that time no special records were

kept designating which felony cases arose out of the riots and which did not. A recent survey conducted by the department reflects the following number of riot defendants represented on felony cases by this office.

Defendants for whom the Public Defender was appointed		908
Penal Code section 995 motions to dismiss granted	28	
Plead Guilty in Department 100	1	
Privat Counsel substituted in	112	
Defendants represented throughout all proceedings	767	

Therefore, approximately 767 cases, *i.e.* individual defendants were absorbed. While the results are not all in, it is clear that as a class the defendants fared much better than ordinary criminal defendants represented by the Public Defender.

In order to absorb these extra cases, thirty-four (34) trial lawyers were assigned to trials. Vacations were for most deputies completed. Two of the additional trial deputies were brought in from branch offices. The other two came from the defunct City Public Defender's Office, the former Public Defender and his principal assistant. The time between plea date and trial date extended from 42 to 45 days, to 56 to 58 days. The case load per deputy was increased as follows:

The week of October 18, 1965—6 cases per deputy.
The week of October 25, 1965—7 cases per deputy.
The week of November 1, 1965—7 cases per deputy.
The week of November 8, 1965—6 cases per deputy.
The week of November 15, 1965, the case load returned to normal, *i.e.* 4 cases per deputy.

All cases by California law must be set absent a waiver within sixty (60) days of the filing of the information, which data is usually contemporaneous with the arraignment date. All custody cases were set within the sixty (60) days. A substantial number of bail cases were set a day or two beyond the sixty (60) days when a defendant was willing to waive the sixty (60 day limit. All trial deputies were instructed to give first attention to custody cases and attempt to try or dispose of such cases on the date on which they were set. Bail cases could be continued for reasonable periods of time without the defendant sustaining any prejudice. Again, further motions for bail reductions and O. R. releases were made and granted in the trial courts. Varying amounts of time were spent with clients on these cases. In many cases when defendants were on bail, they did not make themselves available to the trial deputy for interview and consultation until the trial date.

As of this date, most of these cases have been tried or disposed of. The deputies displayed dedication and perseverance. Many hours of overtime were spent in court, in the office and in the jails without a cent of compensation above their normal salary. No deputy and no office is perfect or infallible, but declarant submits that only an analysis of each case individually could truly reveal whether representation was adequate. Declarant believes that the essential requisites for proper representation existed and were rendered by the Public Defenders Office of Los Angeles County.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 17, 1965

/s/ PAUL G. BRECKENRIDGE, JR.
Paul G. Breckenridge, Jr.

Subscribed and sworn to before me this 28th day of December, 1965.

VIVIAN C. HOWARD
Notary Public, in and for the County of Los Angeles, State of California.

APPENDIX B.

Affidavit.

State of California, County of Los Angeles—ss.

Toshio Harunaga, Deputy Public Defender of Los Angeles County, after being duly sworn, deposes and states as follows:

That on August 16, 1965, there were at least four Public Defenders present in court at all times;

That two or sometimes three Public Defenders were assigned in the holding tanks to hand each defendant a copy of his complaint and to inform each of the defendants of his charges;

That they were also informed of their constitutional rights to counsel, speedy trial, to remain silent and to reasonable bail;

That in respect to bail, the defendants were informed that the bail would be set at a fixed amount of $4,500, plus penalty as to each defendant, because of lack of information as to each defendant's background and that said bail was being set without prejudice and that the bail set could be reduced in the proper cases at a later time;

That in respect to counsel, defendants were informed that the services of the American Civil Liberties Union (ACLU) or the National Association for the Advancement of the Colored People (NAACP) were available to whichever defendant desiring their services, or that the services of the Public Defender were also available; and that an attempt was made to determine if any had private counsel to represent them.

That defendants then were brought out in groups of anywhere from four to twelve or more, and each group was represented by one or two Deputy Public Defenders at the time of arraignment;

That at the time of arraignment, the defendants were again informed of all of their constitutional rights by the Presiding Magistrate, Maurice T. Leader, as follows:

That each defendant had a right to be informed of the charges against him, right to a public and speedy trial, right to be confronted by witnesses against him and to cross-examine them, right to the processes of the Court to enforce attendance of witnesses on his own behalf, right to testify on his own behalf, but had a right not to be compelled to be a witness against himself, right to a reasonable bail, right to an attorney of his own choosing at all stages of the proceedings, and that the Public Defender was appointed to represent each defendant unless each indicated that he was represented by private counsel, and the Public Defender was appointed as to each defendant, and, as to bail, the Magistrate informed the defendants that their bail was being set without prejudice;

That prior to any of the defendants being arraigned, the question of bail was raised and Mr. A. L. Wirin, representing the ACLU, appearing amicus curiae, and several other attorneys whose names are not known to me at this time, appearing on behalf of the NAACP and other individual defendants, made a motion in respect to bail for all defendants which was joined in by himself and the other attorneys, and each attorney was given an opportunity to be heard, and the Court concluded, over the objection of the District Attorney

who was requesting that defendants be remanded without bail, that bail should be set for $4,500, plus penalty as to all defendants without prejudice, subject to a reduction at a later time because the Court had no information as to the background of each defendant at this time.

/s/ TOSHIO HARUNAGA
Toshio Harunaga
Deputy Public Defender

Subscribed and sworn to before me
this 17th day of December, 1965.

William G. Sharp, County Clerk
of Los Angeles County, California